IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—CHANCERY DIVISION

JESSE TERRAZAS,	)	
	)	
Petitioner,	)	
	)	
v.	)	**13 CH 10156**
	)	**Hon. Kathleen M. Pantle**
SUPERINTENDENT OF POLICE OF THE CITY OF CHICAGO and THE POLICE BOARD OF THE CITY OF CHICAGO,	)	
	)	
Respondents.	)	

ORDER

This matter comes to be heard on a Petition for Writ of Certiorari filed by Petitioner Jesse Terrazas. Terrazas seeks review of a decision of the Defendant the Police Board of the City of Chicago terminating his employment with the Chicago Police Department. Prior to his termination Terrazas was a Sergeant.

Terrazas was charged, along with six other members of the Chicago Police Department, with violating several Rules of Conduct in relation to a search of a residence located at 4740 South Prairie, Chicago, Illinois on February 4, 2009.

The six officers with whom Terrazas was charged allegedly conducted a search of the basement apartment at that location for drugs, but did not have a woman who was present sign the consent to search form until after the search had concluded. Under Chicago Police Department rules and regulations, Chicago police officers are to obtain a signature on consent to search forms before the search commences. The six others officers were charged with allegedly violating the Fourth Amendment rights of persons present at the basement apartment. They were charged with coercing the consent given by a tenant and unlawfully conducting a search, but Terrazas was not charged with these types of

violations. Instead, Terrazas was charged with violating CPD rules by failing to respond to the scene and not being present at the search of the basement apartment, even though his duties as a supervising officer required him to be present. The six other officers were also charged with making false statements, to wit: that Terrazas was present during the search at the scene.

The charges, and the factual bases for the charges, were set out in a formal charging document. This charging document was signed by Defendant Superintendent Garry McCarthy. Senior counsel also signed, but under the heading "Approved as to Form".

Specifically, Terrazas was charged with (1) any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department (Rule 2); (2) any failure to promote the Department's efforts to implement its policy or accomplish its goals (Rule 3); (3) failure to perform any duty (Rule 5); (4) disobedience of an order or directive, whether written or oral (Rule 6); (5) making a false report, written or oral (Rule 14); and (6) failure to report to the Department any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, orders, or directives of the Department (Rule 22).

The factual bases for the alleged Rule 2 violations were that Terrazas failed to respond to the scene and was not present at the scene during the search. These factual bases form the charges for the other rule violations, including the entirety of the charges based on Rule 14. Terrazas was also charged with failing to report his team's violations of the Department's Consent to Search policy. These "failing to report" charges allege that Terrazas committed these violations "On or about February 4, 2009, or thereafter,...". Terrazas was also charged with failing to perform the functions of the on-scene supervisor;

failing to ensure that at least one participating member from his team was attired in the prescribed seasonal field uniform; failing to ensure that the citizen giving consent to search the basement apartment had authority to give consent; failing to ensure that the consent to search form was properly completed; and failing to read and/or approve the case report documenting the consent to search incident; failing to supervise the entire consent to search incident.

At the evidentiary hearing, the Superintendent took the position that Terrazas was not present at the scene when the search was being conducted, thereby violating the above rules and regulations of the CPD. The Superintendent presented evidence, including but not limited to GPS evidence and the testimony of a person, Willie Hines, who was arrested at the scene, that Terrazas was not present at the scene. The Superintendent presented no evidence supporting an alternative theory that Terrazas was present and failed in his supervisory duties while present at the scene.

At closing argument, the Superintendent made his position crystal clear by making the following statements to the Board in his opening closing argument:

> "This case essentially boils down to two issues: Was there valid consent and was Sergeant Terrazas present at this search?"[1] (1268:8-10).
>
> "[T]he sergeant's assigned vehicle was never at 4740 South Prairie." (1268:19-20).
>
> "Whether or not Sergeant Terrazas was notified before, during or after the search the sergeant never went to 4740 South Prairie." (1272:11-13).
>
> "He (*i.e.* Terrazas) rubber-stamps the false consent to search, falsely claiming he was present." (1275:22-23).
>
> "Sergeant Terrazas was never at 4740 South Prairie." (1290:21-22).

[1] This statement was made at the very beginning of the Superintendent's closing argument.

"Willie Hines identified every single officer present at the apartment in separate photo arrays. When he got to the photo array of Sergeant Terrazas, he identified the sergeant, said he was not at the house but he was at the station. What motivation could Willie Hines possibly have for saying that the sergeant was not at the apartment but at the station unless it was the truth?" (1291:7-14).

"What is also clear is when he (*i.e.* Terrazas) gave his first statement to IPRA in 2009 he really had no idea what happened during the search." (1292:20-22).

"The supervisor management log is also evidence that Sergeant Terrazas was not at the search." (1293:10-11).

"Sergeant Terrazas' account is directly contradicted by his own officers in this case. It's because he was never at the apartment, and he has been playing catch up and cover up ever since." (1298:5-7).

"The sergeant was never there, and therefore these officers gave false testimony to IPRA." (1298:21-23).

"...Officer Prieto is charged with...falsifying report (*sic*) stating that Sergeant Terrazas was there...". (1299:23-24, 1300:7).

"The sergeant (*i.e.* Terrazas) is charged with violations of Rules 2, 3, 5, 6, 14, and 22 for falsely signing a consent claiming he was the on-scene supervisor, falsely stating he was present and supervising the search." (1302:10-13).

At one point in his argument, the Superintendent also stated, "Having **six** armed officers raid your home is a traumatic experience." (1279:5-6) (emphasis added).

During Terrazas' closing argument the Superintendent objected to an argument made by Terrazas:

"Objection, misstates the testimony and the evidence. I think that there's a lot of evidence in this case to rebut that Sergeant Terrazas was there." (1352:18-21).

In the Superintendent's rebuttal (entitled "Further Closing Argument"), he argued:

"So Sergeant Terrazas' story doesn't really match up with the city's theory obviously because he wasn't there, but that was Sergeant Terrazas' testimony." (1394:2-4).

During the course of the further closing argument there was a colloquy between the hearing officer and the Superintendent during which the hearing officer asked questions

regarding Brenda Hines' identification of Terrazas as being on the scene. (1397:19-22). In his response, the Superintendent did not deviate one iota from his position that Brenda Hines must have been mistaken and that Terrazas was not at the scene. (1397:23-24, 1398:1-13 and 16-21; 1399:7-12; 1400:3-15).

Despite the fact that the Superintendent charged Terrazas with multiple violations of rules arising from his absence at the scene, presented evidence showing that Terrazas was not present at the scene, strenuously argued that he violated the rules because he was not at the scene, argued that the six other officers should be disciplined because they made statements falsely claiming that Terrazas was at the scene, and opposed Terrazas' position that he was at the scene, the Board made the finding of fact that Terrazas was at the scene. Instead of finding Terrazas "not guilty" on the grounds that the Superintendent failed to meet his burden of proof, the Board found Terrazas guilty of violating certain rules because he failed to properly supervise the officers at the scene. In a five-page decision by the Board, the Board determined that "there is insufficient evidence" to prove charges that Terrazas violated department rules because he was not present when the police officers executed the search, that Terrazas and the other officers falsified reports concerning Terrazas' presence on the scene, and that Terrazas and the other officers gave false reports to IPRA concerning Terrazas' presence on the scene. The Board completely repudiated the Superintendent's case and found that the evidence conclusively proved that Terrazas was, in fact, present. The Board found that the Superintendent did not prove his case that Terrazas was not present.

Instead of finding Terrazas "not guilty" based on its own finding that the Superintendent failed to prove his case, the Board went on to find him guilty of the same

misconduct (other than falsifying police reports about Terrazas' presence) that the other officers were found guilty of even though Terrazas was never charged with failing to properly supervise while on-scene.

Terrazas seeks judicial review on the grounds that the Board erred by convicting him on uncharged offenses. Terrazas also raises other grounds for reversal.

"The Administrative Review Act is applicable only in those instances where it has been adopted by express reference by the act creating or conferring jurisdiction upon the administrative agency involved." *Russell v. Dep't of Natural Res.*, 183 Ill. 2d 434, 440 (Ill. 1998) *citing Wilkins v. State of Illinois Department of Public Aid*, 51 Ill. 2d 88, 90, 280 N.E.2d 706 (1972). Where the statute conferring power on an administrative agency does not expressly adopt the Administrative Review Law and provides for no other form of review, the common law writ of certiorari may be utilized to obtain circuit court review of administrative proceedings. *Id.* at 440-441. In a common law certiorari proceeding, the trial court determines from the record alone whether there is any evidence fairly tending to support the order reviewed, and the court cannot set aside the order unless it is palpably or manifestly against the weight of the evidence. *Town of Sugar Loaf v. EPA*, 305 Ill. App.3d 483, 489 (5th Dist. 1999).

Illinois law is clear that "[c]harges in an administrative proceeding need not be as exact and detailed as judicial pleadings, but they must contain a clear statement of the theory on which the agency intends to rely, so that the employee can prepare a defense." *Rohrback v. The Illinois Dep't of Employment Security*, 361 Ill. App.3d 298, 309 (2005). "Due process requires a definite charge, adequate notice, and a full, fair and impartial hearing." *Burns v. The Police Board of the City of Chicago*, 104 Ill. App.3d 612, 615 (1st Dist. 1982). In

Rohrback, the Illinois Appellate Court found that due process barred the agency from pursuing a theory on appeal where it contradicted the basic premise of the charges for the plaintiff-employee's discharge. *Id.*

In this case, like *Rohrback,* the theory upon which the Board relied in its determination was is "diametric contradiction" to the theory in the charges for Terrazas' discharge. *Id.* Despite the fact that Terrazas was never charged with misconduct arising from on-scene behavior, the Board determined that Terrazas was, in fact, present at the scene and that he failed to properly supervise his team while on the scene. This factual determination and decision was in diametric contradiction to the theory of the charges, as expressed so clearly and unequivocally by the Superintendent at the hearing, *i.e.* that Terrazas was not on the scene because he failed to respond to the scene. The Board therefore found Terrazas guilty of uncharged offenses.

The Superintendent does not cite to any case law in response to Terrazas' argument that it is reversible for an agency to convict on uncharged offenses, but rather argues in his Response that some of the charges did encompass the theory that Terrazas was on the scene and failed to properly supervise. (Resp. p. 4). This argument fails.

First, the charges do not state that Terrazas was on the scene and failed to properly supervise his team. There is nothing in the charges cited by the Superintendent in his Response brief to indicate that the Superintendent was pursuing an alternative theory to support the imposition of discipline against Terrazas. Though charges need not meet judicial pleading standards, they still must meet minimal standards required in the administrative arena. *Burns,* 104 Ill. App.3d at 615. Like the vague and unacceptable charges in *Burns,* the charges against Terrazas fail to state the location of the alleged rule

violation. *Id.* Though the charges state that Terrazas failed to perform certain supervisory duties, the charges do not state where Terrazas was when he allegedly failed to perform those duties. Had the Superintendent informed Terrazas that he was alleged to have been on the scene at 4740 South Prairie when these alleged rule violations occurred, Terrazas may have been on notice that he would be called upon to defend himself on the alternative theory that he was present at the scene but failed to properly supervise his team. The charges, however, do not inform Terrazas in any fashion that the Superintendent was charging him with being on the scene and not properly performing his duties. The Superintendent cannot bring vague charges and then rely upon those vague charges to support an alternative and unpleaded theory. The Superintendent cannot escape responsibility for the phraseology of the charges and his own sole theory that Terrazas was not present for the search. The Superintendent himself signed off on the charges and therefore had to know that Terrazas was not being charged in the alternative.

Additionally, had the Superintendent pleaded this alternative theory, Terrazas probably would have been charged with the Fourth Amendment charges that the Superintendent pursued against the other officers who were charged along with him. The absence of such charges is yet another indication that the Superintendent had no intent of pursuing the alternative theory that he now claims is encompassed in the vague language of the charges cited in his Response.

Second, the record is clear that the Superintendent was pursuing a single theory, *i.e.* that Terrazas failed to respond to the scene and was not present for the search of the basement apartment. The Superintendent elicited evidence, including GPS evidence and testimony from witnesses at the scene, to support this sole theory. As detailed above, the

Superintendent's argument against Terrazas was clear and unequivocal that Terrazas was not there, including an argument that there were "six armed officers" raiding the basement apartment. Had the Superintendent been arguing that Terrazas was present, the argument would have been that there were *seven* armed officers raiding the basement apartment. The Superintendent even objected to an argument made by Terrazas in which Terrazas claimed that there was not sufficient evidence to support the Superintendent's theory that he was absent from the scene.

In his Response brief, the Superintendent points to no evidence that demonstrates that the Superintendent had attempted to prove that Terrazas was on-scene and violated his duties while on the scene. The Superintendent also does not point to any argument that espouses this alternative theory he now claims was part of his case all along. As stated above, the Superintendent's evidence and argument were focused on a sole theory, *i.e.* that Terrazas was not present and failed to respond to the scene.

Moreover, the six other officers charged along with Terrazas were called upon to answer charges that they falsely reported that Terrazas was on the scene when he was not there. The Superintendent's argument against the other officers in the same proceeding was clear and unequivocal that they were guilty because they had falsely reported that Terrazas was present when he was not. (1298:19-24 to 1299:1-2; 1299:22-24 and 1300:7) ("All of the police officers were also charged with making false reports to IPRA when they said the sergeant was not [sic] there. The sergeant was never there, and therefore these officers gave false testimony to IPRA. All of the police officers are also charged with being (*sic*) discredit upon the Department when they lied about the sergeant being there and entered without consent.").

Third, at pre-hearing conferences designed for both parties to discuss the issues to be tried, counsel for the Superintendent never mentioned any issue pertaining to an alternative theory that Terrazas was actually on the scene. The GPS evidence was specifically mentioned in these conferences and the Superintendent presented GPS evidence against Terrazas in an attempt to prove that he was not at the scene.

It is clear from the Superintendent's Response brief that he is trying to salvage an indefensible decision made by the Board as the Superintendent knows what charges he brought, what evidence he adduced, and what arguments he made at the hearing below. The Superintendent never pursued a theory that Terrazas was both not present at the scene and present at the scene and any suggestion to the contrary is not supported by anything in the Record.

By finding Terrazas guilty of uncharged offenses, the Board deprived Terrazas of the opportunity to defend himself concerning his actions while on the scene because every charged was premised on the theory that he was not at the scene. Terrazas was also deprived of his right to notice as to what he was being called upon to defend. "The essence of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Comito v. Police Bd. Of Chicago,* 317 Ill. App.3d 677, 686 (1st Dist. 2000); *see also Burns,* 104 Ill.2d at 615. As Terrazas was deprived of due process rights the decision of the Board must be reversed.

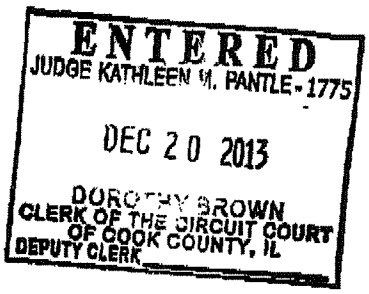
Given the disposition of this issue, there is no need to reach the other issues raised by Terrazas.

The decision of the Police Board of the City of Chicago is reversed.

This is a final Order disposing of all litigation in this matter.

DATE: December 20, 2013

Kathleen M. Pantle



Order

(2/24/05) CCG 0002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

TERRAZAS

v.

Superintendent of Police et al.

No. 13 CH 10156

12PB 2802

ORDER

This cause having come before the Court on the Defendant's Motion to Clarify and the Plaintiff's Motion to Enforce, it is hereby ordered:

This matter is remanded to the Police Board who is directed to enter an order consistent with this Court's ruling on December 20, 2013.

Atty. No.: 04933

Name: Williams Montgomery & John

Atty. for: Defendant

Address: 233 S Wacker Ste 6100

City/State/Zip: Chicago IL 606606

Telephone: (312) 443-3200

ENTERED:

ENTERED
JUDGE KATHLEEN M. PANTLE-1775
JAN 13 2014
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Dated: _____, _____

Judge

Judge's No.